

## 01-1500 CLAY v. UNITED STATES

Ruling below: CA 7, No. 00-3671, 1/25/02 unpublished.

### QUESTION PRESENTED

A federal prisoner generally must file a post-conviction motion under 28 U.S.C. 2255 within one year of "the date on which [his] judgment of conviction becomes final." In cases in which the defendant loses on direct appeal but does not seek certiorari, the circuits have divided over the meaning of "final," a term not defined by the statute. As the government explained on appeal in this case, "[Petitioner] argues, and the Solicitor General agrees, that his judgment of conviction did not become final until the time for filing a petition for a writ of certiorari had elapsed." The Seventh Circuit nonetheless adhered to its contrary precedent, which holds that a conviction becomes "final" when the mandate issues on the defendant's direct appeal, and reiterated its refusal to revisit the issue "notwithstanding the circuit split." The Seventh Circuit specifically declined to overturn its settled rule "without guidance from the Supreme Court."

The Question Presented is:

~~Is a conviction "final" for purposes of 28 U.S.C. 2255 when (i) the appellate mandate issues on direct appeal (as the Seventh and Fourth Circuits hold), or instead (ii) when the defendant's time to petition for certiorari expires (as both Petitioner and the federal government argued below and as the Third, Fifth, Ninth, Tenth, and Eleventh Circuits hold).~~

CERT. GRANTED: 6/28/02

~~Limited to the following question:~~

~~Whether petitioner's judgment of conviction became "final" within the meaning of 28 U.S.C. 2255 para.6(1) one year after the court of appeals issued its mandate on direct appeal or one year after his time for filing a petition for a writ of certiorari expired.~~

ORDERED: 8/26/02

The order granting the petition for a writ of certiorari is amended to read as follows: The petition for a writ of certiorari is granted limited to the following question: Whether petitioner's judgment of conviction became "final" within the meaning of 28 U.S.C. 2255, para. 6(1) when the court of appeals issued its mandate on direct appeal or when his time for filing a petition for a writ of certiorari expired.